

Notice of Allowability

Application No.

10/500,377

Examiner

Cathy K. Worley

Applicant(s)

NASHOLM ET AL.

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to papers filed on Mar. 7, 2006.
2. ☒ The allowed claim(s) is/are 1-12,21-25,30-33 and 36.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of the:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>Mar. 10, 2006</u> . |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>Sept. 13, 2005</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

DETAILED ACTION

Information Disclosure Statement

1. In the Office Action on Nov. 22, 2005, the Examiner mentioned one item on the IDS of Sept. 27, 2004 that was lined out. The Applicants submitted a supplemental IDS on Sept. 13, 2005, and the Examiner considered the article at this time.

Specification

2. The objections to the specification and abstract are withdrawn in light of the amendments.

Claim Rejections - 35 USC § 112

3. The rejections under 35 U.S.C. 112, first paragraph, for written description have been withdrawn in light of the Applicants' arguments. The Applicants argue that "when the prior art includes the nucleotide information, precedent does not set a per se rule that the information must be determined afresh" and the Applicants point out that they have provided numerous D-amino acid metabolizing enzymes known in the art in Tables 1 and 2 (see page 14 of the response dated Feb. 27, 2006). These arguments have been found to be persuasive and the written description rejections are withdrawn.

4. The rejections of claims 1-12, 21-25, 30-33, and 36 under 35 U.S.C. 112, first paragraph, for lack of enablement, are withdrawn in light of the amendments and Applicants' arguments. The Applicants point out that the specification discloses three different methods for using D-amino acid metabolizing enzymes in plants (see page 17 of the response dated Feb. 27, 2006). In addition, the specification includes several working examples (see pages 17-18 of the response). The Applicants' argue that "even if for some D-amino acids the effects of their metabolites may not be known, these effects can easily be tested through routine transfection and expression experiments as disclosed in the application" (see page 21 of the response). This argument is persuasive, and the rejections have been withdrawn.

Examiner's Amendments

5. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Robert M. D. Makowski on Mar. 10, 2006.

The application has been amended as follows:

Claims 13-19 (Cancelled).

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Claim 25. (Currently Amended) The method of claim [12] 11 , wherein [the single nitrogen source comprises] said medium comprises only one or more D-amino acids as a nitrogen source .

Claims 26-29 (Cancelled).

Claims 34-35 (Cancelled).

Claims 37-38 (Cancelled).

6. Claims 1-12, 21-25, 30-33, and 36 are allowed.

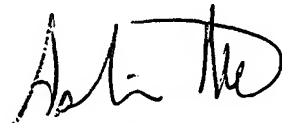
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cathy K. Worley whose telephone number is (571) 272-8784. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CKW
Mar. 17, 2006



ASHWIN D. MEHTA, PH.D.
PRIMARY EXAMINER